

PTO/SB/21 (07-06)

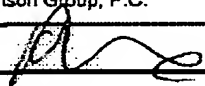
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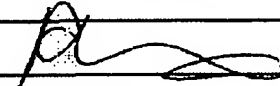
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/780,255	RECEIVED CENTRAL FAX CENTER AUG 08 2006
	Filing Date	February 17, 2004	
	First Named Inventor	Eldon Roth	
	Art Unit	1761	
	Examiner Name	Arthur L. Corbin	
Total Number of Pages in This Submission	9	Attorney Docket Number	317.1030001

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	The Culbertson Group, P.C.		
Signature			
Printed name	Russell D. Culbertson		
Date	August 8, 2006	Reg. No.	32,124

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
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Typed or printed name	Russell D. Culbertson	Date	August 8, 2006

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PTO/SB/17 (07-06)

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Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**
For FY 2005☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$)

0.00

Complete if Known

Application Number	10/780,255
Filing Date	February 17, 2004
First Named Inventor	Eldon Roth
Examiner Name	Arthur L. Corbin
Art. Unit	1761
Attorney Docket No.	317.1030001

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CENTRAL FAX CENTER**AUG 08 2006****METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☒ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 50-3227 Deposit Account Name: The Culbertson Group, PC

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
_____ - 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
_____ - 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____				

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): _____

Fees Paid (\$)**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent) 32,124	Telephone 512-327-8932
Name (Print/Type)	Russell D. Culbertson		Date August 8, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT
317.1030001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)
Eldon Roth)
Serial No.: 10/780,255) Group Art Unit: 1761
Filed: February 17, 2004) Examiner: Arthur L. Corbin
FOR: (METHOD FOR PRODUCING A)
pH ENHANCED COMMUNUTED) Via Facsimile: 571-273-8300
MEAT PRODUCT)

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Alexandria, Virginia 22313-1450

APPELLANT'S REPLY BRIEF

This Reply Brief is filed pursuant to 37 C.F.R. §41.41 in response to the Examiner's Answer mailed June 8, 2006, regarding the above-identified application. Appellant submits this Reply Brief within the two-month period following the mailing of the Examiner's Answer.

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I. ARGUMENT

A. THE REJECTIONS FAIL TO STATE A *PRIMA FACIE* CASE OF OBVIOUSNESS AND IMPROPERLY RELY STATEMENTS AS TO FUNCTIONALITY AND EQUIVALENCY WITHOUT ANY SUPPORT IN THE PRIOR ART.

The Final Office Action mailed September 16, 2005 (the "Final Office Action") rejects all of the appealed claims, claims 17 through 21, 23 through 26, and 28 through 32, under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,433,142 to Roth (the "142 patent") in view of U.S. Patent No. 3,023,109 to Hines ("Hines" or the "Hines patent"). Of the two references making up the proposed combination, the 142 patent does not teach or suggest any treatment process using ammonia gas or ammonium hydroxide solution, while the Hines patent discloses placing ammonia gas in contact with cuts or chunks of red meat to improve the red color of the meat. However, the Appellant's claims do not require placing ammonia gas in contact with any meat. Rather, element (a) of each independent claim, claim 17, 23, and 28, requires "adding an ammonium hydroxide solution" to a meat product. Section (10) of the Examiner's Answer (the "Answer") acknowledges that the Hines patent does not suggest directly adding an ammonium hydroxide solution to a comminuted meat product as required by the Appellant's claims. Because the proposed combination of the 142 patent and the Hines patent clearly does not teach each element set out in the rejected claims, the rejection based on this combination of references fails to set out even a *prima facie* case of obviousness.

In order to justify the rejection based upon the proposed combination of the 142 patent and the Hines patent in view of the fact that neither reference discloses adding an ammonium

hydroxide solution to meat, the Answer makes the following statements regarding the application of ammonia gas as taught by Hines.

Upon contacting the meat, the ammonia gas will react with water or moisture in and on the meat, regardless of the amount present, and thereby form, in situ, ammonium hydroxide on the meat surface. This is substantially equivalent to appellant's step of adding the ammonium hydroxide solution to the meat since, in both instances, ammonium hydroxide will react with the meat to produce a bright red color. (the Answer at p. 3, lines 11-15)

In these statements, the Answer makes three separate propositions that are not supported in any way by the 142 patent or the Hines patent. The Answer first proposes that ammonia gas will react with water on or in the meat to form ammonium hydroxide on the meat surface. Then the Answer proposes that any such ammonium hydroxide formed with water in the meat is equivalent to ammonium hydroxide added to the meat. Finally, the Answer proposes that either the ammonium hydroxide assumed to have been formed in situ with water in the meat or an ammonium hydroxide solution added to the meat will react with the meat to produce a bright red color. Again, none of these propositions are supported by the 142 patent or the Hines patent. The Appellant submits that a determination on obviousness under 35 U.S.C. §103(a) must be made based upon the teachings of the prior art as considered under the well known analysis set out in Graham v. John Deere (383 U.S. 1, 148 U.S.P.Q. 459 (1966)) and cannot be based on unsupported statements as to the functionality of elements and as to equivalency of elements.

Because the rejection of the appealed claims under §103(a) is based upon a combination of references that does not include every element set out in the claims, and because the rejection relies upon bare propositions as to functionality and equivalence of elements without any support in the prior art, the Appellant believes the rejections are clearly in error and should be reversed.

B. THE CITED PRIOR ART REFERENCES FAIL TO SHOW ANY TEACHING, SUGGESTION, OR MOTIVATION TO USE AMMONIA AS A WORKING GAS IN THE PROCESS DISCLOSED IN THE 142 PATENT.

The Answer acknowledges that the 142 patent does not disclose ammonia gas as a viable working gas in the process described in that patent. However, the Answer asserts a motivation to use ammonia gas in the process shown in the 142 patent in view of the teachings of the two patents as to color improvement, and in view of the teachings as to contact time with the working gas in the 142 patent and ammonia contact in the Hines patent.

...Hines clearly provides motivation for use of ammonia gas in Roth since Roth desires to improve color retention in meat (col. 6, lines 1-11) with a working gas, and since Hines discloses that ammonia gas will provide just such a result. Additionally, the contact time period between the meat and ammonia gas in Hines and between the meat and working gas in Roth coincide, with preferred times overlapping at two minutes (Roth, col. 6, lines 12-18 and 31-33 and Hines, col. 1, lines 60-65 and claim (claim 1). (The Answer at p. 3, line 19 to p. 4, line 3).

The Appellant notes the following two points regarding this statement as to the motivation to use ammonia gas in the treatment process disclosed in the 142 patent (referenced in the quoted passage as "Roth").

First, the fact that the 142 patent discloses that the gas pressurization technique provides improvement in color retention, and the fact that the Hines patent discloses that ammonia gas treatment improves the color in meat do not provide a motivation to use ammonia gas as the working gas in the 142 patent process. Specifically, since the 142 patent discloses that any gas increases color retention, there would be no need to use ammonia gas as taught in the Hines patent.

Second, the Appellant respectfully submits that the above-quoted rationale for combining the 142 patent and the Hines patent ignores the admonition in Hines that exposure to ammonia

1 gas must be limited to avoid undesirable results, and ignores the differences between the
2 treatment pressure of the working gas in the 142 patent and the application of ammonia gas
3 atmosphere as disclosed in the Hines patent. In particular, the Hines patent discloses an
4 ammonia gas exposure time of up to five or six minutes, although treatment times beyond about
5 three minutes makes the meat leathery (Hines at col. 1, lines 63-66 and col. 2, line 1). The Hines
6 patent refers to exposing meat to an "atmosphere" containing ammonia but does not disclose any
7 particular pressure at which the ammonia gas is applied. In contrast, the specific example in the
8 142 patent having a treatment time of two minutes uses pressurization with carbon dioxide gas at
9 3500 psi for the two-minute operating period. (Col. 6, lines 16-20). There is no suggestion in the
10 142 patent or the Hines patent that pressurization with ammonia gas would be appropriate at the
11 elevated pressures taught by the 142 patent, that is, at the elevated pressures that the 142 patent
12 teaches are required to reduce the gas pressure holding period.

13 Because the 142 patent and Hines patent do not fairly provide any teaching, suggestion,
14 or motivation to combine the references as proposed by the Final Office Action and Answer, the
15 Appellant submits that the references are improperly combined under 35 U.S.C. §103(a), and that
16 the rejections should therefore be reversed for this reason as well.

1 II. CONCLUSION

2 For all of these reasons, the Appellant submits that claims 17 through 21, 23 through 26,
3 and 28 through 32 are entitled to allowance and respectfully requests that the Board reverse the
4 decision of the Examiner rejecting these claims.
5

6 Respectfully submitted,

7 The Culbertson Group, P.C.

8
9 Date: 8 Aug 2006

By: 

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20 CERTIFICATE OF FACSIMILE

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22 I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and
23 Trademark Office, (Facsimile No. 571-273-8300) on August 8, 2006.

24
25 Russell D. Culbertson, Reg. No. 32,124 